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STATE OF MONTANA

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WILLIAM J. O'CONNOR II
O'CONNOR & O'CONNOR, P.C.
208 North Broadway, Suite 412
Billings, MT 59101
406-252-7127
Attorney for Renee Griffith

IN THE SUPREME COURT OF THE STATE OF MONTANA
SUPREME COURT NO. DA 10-0109

RENEE GRIFFITH, Plaintiff and Appellant, v. BUTTE SCHOOL DISTRICT NO. 1, CHARLES UGGETTI AND JOHN METZ, Defendants and Appellees.	BRIEF OF PLAINTIFF/APPELLANT, RENEE GRIFFITH, IN OPPOSITION TO THE ACLU'S MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE
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Comes now the Plaintiff/Appellant, Renee Griffith, and files her objection to the Motion of the ACLU for leave to file brief as Amicus Curiae.

Rule 12(7) of the Montana Rules of Appellate Procedure, adopted in 2007, provides the elements to be set forth in the motion for leave to file an amicus brief. It requires: "A motion for leave shall identify the interest of the applicant, state the reasons why a brief of an amicus curiae is desirable, identify the party whose position amicus supports, provide the dates upon which the brief can be filed, and indicate whether the other party consents to the request."

The ACLU states in its motion that it is not taking a position supporting either party, nor does it have any specific interest in the case. It states that its brief

would “hopefully serve as a resource to the Court with respect to the broader ramifications of a ruling in this matter.” ACLU Motion, p.2.

An amicus brief can be filed “only upon invitation or leave of the supreme granted on motion.” Rule 12(7) Montana Rules of Appellate Procedure. The Montana cases which have allowed such a filing, would appear to require some actual nexus of attachment to the issue, such as a department of the state that deals with the implementation of rules called into question. (*Missouliau, v. Board of Regents of Higher Educ.*, 675 P.2d 962, 207 Mont. 513 (Mont. 1984). Or, *State Personnel Division, Department of Administration v. Child Support Investigators*, 2002 MT 46 (MT, 2002) wherein the Board of Appeals filed an amicus brief in support of its decision. Or, *Eberl v. Scofield*, 244 Mont. 515, 798 P.2d 536 (Mont. 1990) wherein it was noted that “the right to be heard as amicus curiae is within the discretion of the court.” The *Erberl* court continued that the Montana Department of Livestock was appropriately permitted to file an amicus brief dealing with inaccuracies reported in their brief based on a letter by the Animal Industry Division of Alberta Agriculture, which was a governmental agency in Canada. (Citations Omitted.) The Court therein noted that the amicus brief and supporting exhibits were relevant to the principal issues between the plaintiff and the defendant. *Id.* At 539. It is noted that the case cited in the *Erberl* decision held that the purpose of an amicus brief was to “inform the court as to facts or situations

that may have escaped consideration or remind the court of legal matter which has escaped its notice and regarding which it appears to be in danger of going wrong.”

State ex re. Bennett v. Bonner, 123 Mont, 414, 420, 214 P.2d 747 (Mont. 1950)

Such reasoning is not applicable here. The parties, both of whom are capable of presenting comprehensive briefs and arguments to the Court, have agreed to the very limited facts. The ACLU is not required to regulate the issue involved. There are no facts or situations mentioned by the ACLU in its brief that something “may have escaped consideration.” There is no necessity because the lack of ability or mischaracterization of facts by either party to demonstrate to this Court facts or legal matters which have escaped the Court's notice or for which this Court appears to be “in danger of going wrong.”

The ACLU can and does occasionally represent persons in legal matters in pressing their claims. It represents neither party here. Neither party has requested that it file an amicus brief. Indeed, by its own motion, the ACLU is not advocating for either party. ACLU Motion, p.2. It is attempting to usurp the constitutionally provided responsibilities of the Montana Supreme Court to independently and singularly review decisions of the District Court. In effect, by offering to “serve as a resource to the Court with respect to the broader ramification of a ruling in this matter” it is attempting to become an extra Justice presiding over this matter.

This Court should not permit the final comment be made to it by a non-

judicial, non-involved third party with its own agenda. The ACLU has requested leave to file its brief after the initial filings of both parties. Should there be no oral argument, this action would completely deprive one party of its rights to any response and requires the other to address issues not considered pertinent by the actual litigants. By not requesting any amicus briefs, it is assumed that this Court is under the impression, as is the case, that there are no deceptions in the facts and no lurking dangers in the law. It can be similarly assumed that the Court felt capable of deciding the matter. Thus, were there no oral argument, and leave to file the ACLU brief were given, the last word to the Court would be from non-party, not a member of this Court.

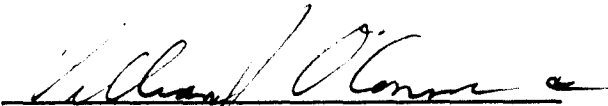
All citizens have an interest in this case, as they do in all cases before this Court. The wisdom of this Supreme Court is the constitutional safeguard of the rights of all of the citizens. The ACLU, by its own motion, has nothing to add to this matter nor anything at stake in this matter, but simply wants to occupy a position as if it were a closet member of the Court.

The parties to this action, through their chosen counsel, are both capable of advancing the issues as they have done below. There are no hidden facts or traps which have been kept from the court below. There are legal issues which this court is, by education, experience and constitutional election, able to discern. Leave of this Court should not be granted to give a super priority to an outside group with

no real interest and only its personal agenda in this matter in which it is not a party.

It is requested that this Court deny the motion of the ACLU for leave to file a brief as Amicus Curiae.

Dated this 27th day of May 2010.

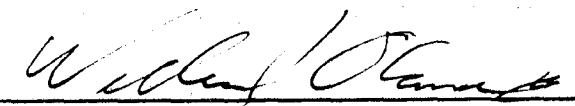

William J. O'Connor II
Attorney for Plaintiff and Appellant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Brief of Plaintiff/Appellant, Renee Griffith, in Opposition to the ACLU's Motion for Leave to File Brief as Amicus Curiae was served by U.S. Postage prepaid mail on the 27th day of May, 2010 upon the following:

Elizabeth I. Griffing, Esq.
ACLU of Montana
P.O. Box 9138
Missoula, MT 59802

Debra Silk, Esq.
Tony C. Koenig, Esq.
Montana School Boards Association
863 Great Northern Blvd., Suite 301
Helena, MT 59601


William J. O'Connor II
Attorney for Plaintiff and Appellant